UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THADDEUS AND LYNNE RURAK, Plaintiffs, v. MEDICAL PROFESSIONAL MUTUAL INSURANCE COMPANY, a/k/a PROMUTUAL Defendant.	)	CIVIL ACTION NO: 02-12274-PBS

MEMORANDUM AND ORDER

May 19, 2003

Saris, U.S.D.J.

INTRODUCTION

Plaintiffs Thaddeus and Lynne Rurak allege that Defendant ProMutual engaged in unfair insurance practices in not resolving a medical malpractice claim when the liability of ProMutual's insured, Dr. Teitler, was reasonably clear. Plaintiffs assert claims under Mass. Gen. L. ch. 176D, § 9 (Count I); Mass. Gen. L. ch. 93A (Count II); and intentional infliction of emotional distress (Count III). Defendant moves to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) or, in the alternative, for an order to stay the action pending resolution of the underlying malpractice claim. After hearing, the motion to dismiss is **DENIED** in part and **ALLOWED** in part.

FACTUAL BACKGROUND

With all reasonable inferences drawn in favor of the plaintiffs, the complaint alleges the following facts, many of which are disputed by ProMutual:

On December 8, 2000, Plaintiff Thaddeus Rurak ("Rurak") received emergency medical care from Dr. Ronald Teitler ("Teitler") at Anna Jacques Hospital in Newburyport, Massachusetts. Due to Teitler's negligent treatment, Rurak experienced a heart attack on December 10, 2000, resulting in permanent neurological damage. Teitler was insured by Defendant ProMutual.

In April, 2001, the Ruraks presented a claim to ProMutual under Dr. Teitler's professional liability policy. In August, 2001, the Ruraks supplied ProMutual with the expert report of Dr. Christopher M. Degnan, former Chairman of the Emergency Department at the Lahey Clinic, indicating that Teitler's liability for Rurak's heart attack was reasonably clear. ProMutual then obtained its own expert report, also demonstrating Teitler's liability. In October, 2001, the Ruraks forwarded to ProMutual another expert report by Dr. Gervasimos Zervos, a cardiologist at the Massachusetts General Hospital, stating, "It is beyond doubt that had Mr. Rurak been appropriately cared for on December 8, 2000 in the emergency room [by Dr. Teitler], his subsequent cardiac arrest on December 10, 2000 and its

consequences as described below would have been prevented." (Par. 14). In the past, Dr. Zervos has been used by ProMutual as its own cardiology expert. In February, 2002, ProMutual received a fourth expert report also indicating that Teitler's liability was reasonably clear.

After waiting fifteen months for a response to their claim, in July, 2002, the Ruraks sent ProMutual a demand letter claiming that ProMutual was violating Mass. Gen. L. c. 93A, §§ 2 and 9 by engaging in conduct specifically proscribed by Mass. Gen. L. c. 176D, §3(9). They allege that ProMutual failed to: respond reasonably to communications, and promptly investigate claims and effectuate a prompt settlement. This stonewalling compelled the insureds to institute litigation. The letter made a settlement demand in the amount of one million dollars. ProMutual's response dated October 8, 2002, included no settlement offer and denied any violations of Mass. Gen. L. c. 176D or c. 93A. Plaintiffs have not filed a medical malpractice claim against Dr. Teitler.

STANDARD OF REVIEW

For purposes of this motion, the Court takes as true "the well-pleaded facts as they appear in the complaint, extending [the] plaintiff every reasonable inference in [her] favor." Coyne v. City of Somerville, 972 F.2d 440, 442-43 (1st Cir. 1992) (citing Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 51

(1st Cir. 1990)). A complaint should not be dismissed under Fed. R. Civ. P. 12(b)(6) unless "'it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief.'" Roeder v. Alpha Indus., Inc., 814 F.2d 22, 25 (1st Cir. 1987) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

DISCUSSION

The defendant insurer contends that the complaint must be dismissed or stayed pending a trial on the medical malpractice claim against Dr. Teitler. Even though the plaintiffs have not initiated suit against Dr. Teitler, the defendant insists that to allow a bad faith insurance claim to proceed before a determination of liability against the doctor would be to put the buggy in front of the horse.

Plaintiffs respond that to stay or dismiss the bad faith insurance claim pending resolution of a medical malpractice claim in court would frustrate the statutory purpose to "encourage the settlement of insurance claims" and "discourage insurers from forcing claimants into unnecessary litigation to obtain relief." Clegg v. Butler, 424 Mass. 413, 419, 676 N.E.2d 1134 (1997) (citations omitted).

The Massachusetts Unfair Claims Settlement Practices Act, Mass. Gen. L. ch. 176D, §3(9)(f) requires an insurance company to "effectuate prompt, fair and equitable settlements of claims in

which liability has become reasonably clear." Liability for purposes of §3(9)(f) encompasses both "fault" and "damages." Clegg, 424 Mass. at 421. "For purposes of G.L. c. 176D and G.L. c. 93A, damages may be 'reasonably clear' well before, or indeed in the absence of, a judicial order resolving every contested issue as to monies owed." R.W. Granger & Sons, Inc. v. J&S Insulation, Inc., 435 Mass. 66, 75-76, 754 N.E.2d 668 (2001). The Supreme Judicial Court has held that a third party claimant need not successfully litigate an underlying claim by a third party as a requisite to filing a claim for bad faith insurance practices. Clegg, 424 Mass. at 418 (rejecting contention that a third-party claimant has no right to a settlement offer by the insurer under this statute prior to a trial or entry of judgment). The insurance company's position flies in the face of Massachusetts caselaw.

Defendant points out that it is "well-established Massachusetts practice" to stay an action for bad faith insurance practices pending resolution of a medical malpractice action. This case management technique is sometimes employed to obviate difficult attorney-client and work product issues. See e.g., Gross v. Liberty Mut. Ins. Co., 84-0138, 1984 Mass. App. LEXIS 2011 (Mass. App. Ct. April 24, 1984) (staying order to produce privileged documents regarding settlement value of case issued against insurer, pending trial on liability). In addition, a

stay may conserve judicial resources. See id. While a court certainly would have the discretion to stay a claim for bad faith insurance practices pending the resolution of a medical malpractice trial, the court is not required to do so. In any event, there is no pending medical malpractice action here.[1]

The Court dismisses the claim alleging a violation of Mass. Gen. L. ch. 176D, §3(9)(g), as this language creates no rights in persons other than the insured. See Jacobs v. Town Clerk of Arlington, 402 Mass. 824, 829, 525 N.E.2d 658 (1988). In addition, the claim of intentional infliction of emotional distress is dismissed.

ORDER

The defendants' motion to dismiss is **ALLOWED** with respect to the claims of Mass. Gen. L. ch. 176D §3(9)(g) and intentional infliction of emotional distress. Otherwise, it is **DENIED**.

PATTI B. SARIS
United States District Judge

[1] At oral argument, counsel suggested that a medical malpractice action was unlikely if the Court let this action proceed. If, however, a malpractice action is filed, plaintiff will have to hire new counsel so that the production of privileged materials would not prejudice unfairly the insurance company.